

## TERMS OF OFFICE MEMBERS OF CERTAIN REGULATORY AGENCIES

JULY 2, 1959.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Interstate and Foreign Commerce, submitted the following

### R E P O R T

[To accompany S. 1965]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1965) to establish certain provisions with respect to the removal and the terms of office of the members of certain regulatory agencies, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass:

#### PURPOSES OF THE BILL

This bill is designed to amend the Federal Power Act and, the Communications Act of 1934 so as to make uniform the termination of membership on the Federal Communications Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, and the Civil Aeronautics Board.

#### NEED FOR THE LEGISLATION

Under existing law, members of the Interstate Commerce Commission, the Federal Trade Commission and the Civil Aeronautics Board; upon the termination of their appointment to office, continue in office until their successors have been appointed and have qualified. On the other hand, terms of members of the Federal Power Commission, and the Federal Communications Commission, expire at the end of the term of office.

Your committee is of the unanimous opinion that the laws governing these five "arms of Congress" should be uniform with respect to the termination of the terms of office of the members.

Presidential nominations for appointments to the Federal Trade Commission, the Federal Power Commission, the Federal Communications Commission, the Interstate Commerce Commission, and the

Civil Aeronautics Board, among others, come to this committee. One of the things that has been of some concern to your committee has been the situation which results when a Board or Commission is at less than full strength during the period between the time a member's term expires and the time his successor is confirmed and takes his oath of office. This can, and has on occasion, made it impossible, particularly on a five-member Board, to reach a decision. It has worked delays in important pending actions. This has proven not only to be a handicap to the agency but may deprive the public of the benefits of the services which the agency by law is required to give.

One of the complaints heard most frequently by your committee has been the delays experienced in processing cases before these administrative agencies. The legislation herein reported should, to a certain degree, eliminate that type of delay which is created whenever such a vacancy occurs. In addition, this bill should eliminate the pressures for quick and hasty action by the Senate where a nomination is submitted a few days prior to the expiration of a member's term. Under normal conditions this additional period of time should give the Senate adequate opportunity to perform its rightful function in more fully and objectively passing upon the nomination and at the same time it will afford the Chief Executive sufficient time to select a well-qualified successor.

The statutory terms of office and the number of members of the regulatory agencies involved are as follows:

	Number of members	Term of office
		<i>Years</i>
Civil Aeronautics Board.....	5	6
Federal Communications Commission.....	7	7
Federal Power Commission.....	6	5
Federal Trade Commission.....	5	7
Interstate Commerce Commission.....	11	7

All of the acts provide that in the case of an unexpired term of office, the nomination shall be for the balance of the term of office involved. This bill makes no change in the actual statutory term of office.

■ Prior to the enactment of the Federal Aviation Act of 1958, the terms of the members of the Civil Aeronautics Board expired at midnight on the last day of their term of office. Before the Congress enacted the Federal Aviation Act of 1958, the Board had experienced the following periods of vacancy of members since 1941:

Date term expired	Date successor took oath	Days of vacancy
Dec. 31, 1956.....	Apr. 4, 1957	98
Dec. 31, 1955.....	June 11, 1956	162
Dec. 31, 1954.....	Mar. 1, 1955	59
Dec. 31, 1950.....	Feb. 6, 1951	36
Dec. 31, 1947.....	Apr. 6, 1948	96
Dec. 31, 1941.....	Jan. 15, 1942	14

A similar table for the Federal Power Commission discloses the following periods when the Commission was not at full strength:

Date term expired	Date successor took oath	Days of vacancy
June 22, 1934.....	Aug. 13, 1934	52
June 22, 1942.....	July 10, 1942	18
June 22, 1952.....	July 9, 1952	17
June 22, 1953.....	Aug. 17, 1953	56
June 22, 1954.....	July 9, 1954	17
June 22, 1957.....	Aug. 16, 1957	55

In its report on this legislation, the Commission advised that "This situation has on occasion made it impossible to reach a decision in a particular case, \* \* \*"

Your committee is of the firm opinion that these "arms of Congress" should be kept at full strength, and that the laws governing the terms of office of the members thereof should be uniform.

We urge the enactment of the bill.

#### AMENDMENTS

The bill, as introduced, also would have made uniform the President's power to remove from office a board or commission member for "inefficiency, neglect of duty, or malfeasance in office." Under existing law members of the Interstate Commerce Commission, the Federal Trade Commission, and the Civil Aeronautics Board may be so removed. The quoted language is not contained in the acts governing the Federal Communications Commission and the Federal Power Commission.

Your committee believes that the power to remove from office should be the subject of further study in view of recent decisions of the Federal courts (*Myers v. U.S.*, 272 U.S. 52; *Humphrey's Executor v. U.S.*, 295 U.S. 602; *Weiner v. U.S.*, 357 U.S. 349). Accordingly this portion of the bill has been stricken.

The title of the bill has been changed to better describe its purpose.

#### AGENCY COMMENT

The Comptroller General, the Federal Power Commission, and the Federal Communications Commission favor enactment of the bill.

The Federal Communications Commission advised your committee of its position by telephone: The reports of the Comptroller General and the Federal Power Commission follow:

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., May 27, 1959.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Interstate and Foreign Commerce,  
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of May 18, 1959, requests our views on S. 1965.

The bill would amend the Federal Power Act and the Communications Act of 1934, so as to provide for the removal by the President of Commissioners of the Federal Power Commission and the Federal Communications Commission for inefficiency, neglect of duty, or malfeasance in office and to authorize such Commissioners upon expiration of their terms to continue to serve until their successors are appointed and have qualified.

The apparent purpose of the proposed legislation is to have provisions of law concerning expiration of terms and removal from office of Commissioners of the Federal Power Commission and the Federal Communications Commission similar to those now in existence for Commissioners of the Federal Trade Commission and members of the Civil Aeronautics Board.

We see no reason why the provisions regarding expiration of terms and removal from office of Commissioners of the so-called regulatory agencies should not be the same. Therefore, we recommend enactment of S. 1965. Concerning removals from office we refer you to the recent case of *Wiener v. United States*, Docket No. 52, Supreme Court of the United States, October term 1957.

Sincerely yours,

JOSEPH CAMPBELL,  
*Comptroller General of the United States.*

UNITED STATES OF AMERICA,  
FEDERAL POWER COMMISSION,  
*June 23, 1959.*

REPORT ON S. 1965, 86TH CONGRESS, A BILL TO ESTABLISH CERTAIN PROVISIONS WITH RESPECT TO THE REMOVAL AND THE TERMS OF OFFICE OF THE MEMBERS OF CERTAIN REGULATORY AGENCIES.

Section 1 of this bill would amend the Federal Power Act to provide that a Federal Power Commission Commissioner, upon the expiration of his term of office, shall continue to serve until his successor is appointed and has qualified. This section would also authorize the President to remove any Commissioner for inefficiency, neglect of duty, or malfeasance in office.

Enactment of the bill would avoid situations where the Commission is at less than full statutory strength during the period between the time a member's term expires and the time his successor is confirmed and takes his oath of office. Our records indicate that the Commission in years past has experienced the following periods of vacancy:

Date term expired	Date successor took oath	Days of vacancy
June 22, 1934	Aug. 13, 1934	52
June 22, 1942	July 10, 1942	18
June 22, 1952	July 9, 1952	17
June 22, 1953	Aug. 17, 1953	56
June 22, 1954	July 9, 1954	17
June 22, 1957	Aug. 16, 1957	55

This situation has on occasion made it impossible to reach a decision in a particular case, and may cause delays in important pending actions, thus depriving the public of the benefits of the services which the Commission was established to perform.

With respect to the removal power of the President (p. 1, line 9 through p. 2, line 2), the amendment, together with the one to the Communications Act of 1934 also proposed in the bill, will make the provisions of the various regulatory commission acts uniform in this regard.

We recommend enactment of section 1 of the bill and would have no objection to section 2.

WILLIAM R. COMIOLE, *Acting Chairman.*

#### CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

#### FEDERAL POWER ACT

\* \* \* \* \*

FEDERAL POWER COMMISSION; CREATION; NUMBER; APPOINTMENT; TERM; QUALIFICATIONS; VACANCIES; QUORUM; CHAIRMAN; SALARY; PLACE OF HOLDING SESSIONS (16 U.S.C. 792)

A commission is hereby created and established, to be known as the Federal Power Commission (hereinafter referred to as the "commission") which shall be composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, \* \* \*.

The commissioners \* \* \* shall be appointed each for a term of five years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. *Upon the expiration of his term of office, a Commissioner shall continue to serve until his successor is appointed and has qualified.* Not more than three of the Commissioners shall be appointed from the same political party. \* \* \*

#### THE COMMUNICATIONS ACT OF 1934, AS AMENDED

\* \* \* \* \*

SEC. 4. Federal Communications Commission; composition and provisions relating thereto generally (47 U.S.C. 154).

(a) The Federal Communications Commission (in this chapter referred to as the "Commission") shall be composed of seven commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom the President shall designate as chairman.

(b) Each member of the Commission shall be a citizen of the United States. \* \* \* Not more than four members of the Commission shall be members of the same political party.

(c) The commissioners first appointed under this chapter shall continue in office for the terms of one, two, three, four, five, six, and seven years, respectively, from the date of the taking effect of this chapter, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years; except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds. No vacancy in the Commission shall impair the right of the remaining commissioners to exercise all the powers of the Commission. *Upon the expiration of his term of office, a Commissioner shall continue to serve until his successor is appointed and has qualified.*

